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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SPENCER DUPREE SAUNDERS,

Defendant and Appellant.

D040179

(Super. Ct. No. SCE215985)

APPEAL from a judgment of the Superior Court of San Diego County, Louis R. Hanoian, Judge. Affirmed.

The People charged Spencer Dupree Saunders with residential burglary (Pen. Code, §§ 459/460)¹ while a person was present in the residence (§ 667.5, subd. (c)(21)), attempted rape (§§ 664/261, subd. (a)(2)) and assault with intent to rape (§ 220). On the

¹ All statutory references are to the Penal Code.

day set for trial, the court permitted the prosecution to amend the information by adding a charge of assault with a deadly weapon or force likely to produce great bodily injury (§ 245, subd. (a)(1)). A jury convicted Saunders of residential burglary and assault with a deadly weapon or force likely to produce great bodily injury. It found he personally used a deadly weapon during the burglary (§ 12022.5, subd. (b)(1)). The court sentenced him to prison for seven years: the six-year upper term for residential burglary enhanced one year for weapon use. It stayed sentence for the aggravated assault.

FACTS

Around 5:00 a.m. on September 22, 2001, Monique J. was asleep in the El Cajon apartment she shared with her grandmother when a masked man later identified as Saunders entered her room and jumped on her. He held scissors to her neck, inflicting a small cut, and cut her hand. She yelled for her grandmother. Her grandmother came and the man got off Monique. During a scuffle, Monique swung scissors and may have cut the man. During the man's escape one of the socks he wore over his hands came loose and he left it behind. Later that morning, Monique saw in Saunders's car a sock that matched the sock she found in her apartment. She and her boyfriend confronted Saunders. Saunders had blood on his shirt. The same morning, Saunders called a friend and told her he was turning himself in to police because he believed he had done something bad, he might have raped someone. He went to his friend's house to drop off his car and showed her cuts on his chest and arm. An officer went to Saunders's apartment and Saunders told him he had been awakened by a man and a woman, apparently Monique and her boyfriend, and he believed he had done something bad. He

said he had been doing a lot of drugs and thought he had committed a crime. Saunders testified he had been smoking a lot of marijuana and drinking an energy drink, had not been sleeping, and did not recall being in Monique's apartment.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court erred in permitting the prosecution to amend the information; (2) whether the trial court abused its discretion in denying probation; and (3) whether the sentence was appropriate

We granted Saunders permission to file a brief on his own behalf. He has not responded. A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Saunders on this appeal.

DISPOSITION

The judgment is affirmed.

KREMER, P. J.

WE CONCUR:

HUFFMAN, J.

O'ROURKE, J.